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NO. 93CI-04894 JEFFERSON CIRCUIT COURT
DIVISION 12

ROBERT L. MADDOX, et al PLAINTIFFS

VS DEPOSITION FOR THE PLAINTIFFS

DEFENDANT DEPENDANT, by his Attorney J. Fox DeMoisey DEFENDANT

DEPONENT: Merrell Williams, Jr., Ph.D.
March 3, 1994

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The deposition of MERRELL WILLIAMS, JR., Ph.D., taken in the offices of Ogden, Newell & Welch, 1200 One Riverfront Plaza, Louisville, Kentucky, on Thursday, March 3, 1994, at about the hour of 11:53 A.M., said deposition being taken pursuant to Notice for use in accordance with the Kentucky Rules of Civil Procedure.

*** *** ***

MERRELL WILLIAMS, JR., Ph.D., after first being duly sworn, deposed and said as follows:

EXAMINATION BY MR. JOHN T. BALLANTINE

MR. BALLANTINE: You are the Merrell Williams who is the defendant in this case, Robert L. Maddox, et al, started out versus unknown defendant, by his attorney J. Fox DeMoisey, and now, of course, you have been identified?

MR. WILLIAMS: Yes.

Q. Mr. Williams, to put this deposition in the framework of why we're here, you recall that on January 12 of this year I was present in your lawyer's offices. And we started a deposition at which there was a lot of exchange between your lawyer and me, but basically it had to do with the turning over to us the materials that were covered by the temporary injunction that's involved in this case?

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A. I have that deposition here, yes.

Q. Okay. If you will refer to page 11 then, if you've got that transcript right there, down at the very bottom at the middle or so of line 23 I said, "Do you agree, sir, that your signature on the two boxes and dated signature on the two boxes and on this envelope will constitute your representation that these three containers are your compliance with the court order? That just takes a yes or no." Now, before we get back to that question, do you recall as we sit here now that there were in the deposition room on a little baggage dolly or cart, if you will, two boxes, one of which had per your representation some components of a computer. And you and I went through an exercise of standing the box upright or in a certain position, and then I think you initialed or signed and dated that box. Do you recall that occurring?

A. I recall the -- the deposition and the appearance and what happened, yes.

Q. Okay. And there were two boxes on the baggage cart or baggage dolly that were in the deposition room?

MR. DEMOISEY: If I may, perhaps we can expedite this. I'll stipulate that there was two large boxes, one of which we represent contains the computer

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that he used. He did initial it and did go through the exercise of standing it on what he thought was the correct end. There was a somewhat smaller banker size box also taped that was produced, and he did sign and date that, I believe. We might have also -- I'm not sure about that. I think we put initials on it or something. There was also an envelope produced that I had had, and it had been sealed some time ago. We had both signed that. And we initialed and signed that, and he represents that to be the narrative. And if that helps you any, I'll stipulate all that happened on January 12th.

MR. BALLANTINE: Thank you.

MR. DeMOISEY: Sometime later a representative of your office came by and picked it up.

Q. Okay. Thank you. Now then, do you agree, sir, that those two boxes and the envelope that your lawyer just described constitute your representation that the three containers are your compliance with the court's temporary injunction in this case?

A. And I'm assuming you're referring to the same statement on page 11 of the other deposition, "Do you agree, sir, that your signature on the two boxes and dated signature on the two boxes and this envelope will constitute your representation that these three

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containers are your compliance with the court order?"

Q. I don't understand what you just assumed.

A. Well, I was just quoting what was similar to what you said before.

Q. I understand. My question to you at the moment is, are the two boxes and the envelope that were present at your deposition on January 12, 1994, in your lawyer's office, are they your compliance with the temporary injunction in this case?

A. And I refer you to page 19 of the deposition and the answer that was provided at the time, "It represents what it is. It is what it is." That's line one, page 19. And I also state further on page 19, line 12, "I have no further answer."

Q. I can read what the transcript of that deposition says. My question --

A. That, sir, represents my compliance with the court in accordance with this statement here. I might also add that I'm very confused, because I really am not able to consult with counsel. I am confused by what appears to be an order as I see it which is interpreted by the verbal statements of Judge Wine on January 10, 1994. I have made a transcript of that on the typewriter. And there seems to be some contradictory statements that don't actually meet with the word 'all

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information'. As a layperson, sir, I can't understand this. I have no knowledge of how to interpret this. And I guess what I am saying is that I've given your answer to you. You've asked it, and I've answered it. Now, for example, does all information mean the information that I have found in the public record? And, for example, that would be in the public record. This would be in the public record. This would be in the public record. This would be in the public record. I'm representing to you that the first document you are holding is from the Cipollone documents. They are in the public record. I'm representing to you that the second document -- I can't really see it from here, and I can't represent it -- is a book which I recently checked out of the library, and I believe that was published in 1964. And I have read it.

Now, the document right there is the 1965 hearings. Is that correct? Cigarette Labeling and Advertising Part I and II, public document. And I have a real difficult time interpreting what exactly you mean. What you have -- what you just had your hands on was H.R.2147, which is a bill which is -- was introduced by Senator Mike Synar. And I have a very confused concept of what exactly -- well, for example,

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patents. Here I was watching a show the other day, and it was a -- a fascinating piece on Day One. Mentioned a patent. And since I have a Ph.D. and am very capable of doing research, I was very fascinated by this possibility of finding this patent. And through no knowledge that I gained through my employment at all I found that document, which is a nicotine transfer. And I was quite shocked by that.

But -- and here is a document which is also public, and it deals with something that just is fascinating to me. And it is a patent on a process for increasing the filling capacity of tobacco. I don't know that I am acquainted with this process or have been through my knowledge. But all information might cover this. For example, "The process of example one was repeated employing Freon-11," which is a class one substance. And I am very shocked by that. You can put that in the record.

And I don't know what the interpretation of this is as a layperson. And I look at the order, and it says don't -- you know, all the information that you have in your head, all the information that comes forth, and the order, of course, refers to those things which he has taken from the plaintiffs. If he has a public document or other court documents, whenever it

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might be, that's obviously not going to be subject to this. But I can't interpret this as a layperson. I don't know if a written order, which says one thing and your -- your turnover means my head or not. And I can't consult with my counsel to deal with that any specific -- more specifically. And here's -- I don't exactly know what this -- these are patent pieces here. And I -- I've never seen this document before, but I do think it's on Legionnaires' Disease. What more information I can give you I don't know. All of this, incidentally, gentlemen, I have acquired during the process of the last few weeks. And I've done so because I have an understanding, as best as I can, that we can make a case or state something, put it in the record based on my research and public documents. If that is the case, then you have some of those. But my answer is on page 19. It's -- my compliance represents what it is. It is what it is.

I also might mention that some time ago, and I can't discuss this beyond what I've been able to understand it. There's a criminal investigation. I was contacted by a U. S. -- a man who represented himself as U. S. Attorney some time ago, before any of this began. And at his request I'm not to discuss anything. And that's as far as I can go with -- with

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this. As I understand it, I could be involved as a co-conspirator. This criminal investigation is a U. S. Attorney in Brooklyn, New York. His name is Anthony Valenti. And I can't discuss that beyond that. And I think on the basis of the possibility of my own involvement in this I have a right to assert the Fifth Amendment privilege. And I will do so. That's it.

Q. Are you through?

A. I'm through.

Q. Do you represent that the two boxes and the envelope that were present at your deposition in this case on January 12, 1994, in your attorney's office represent your compliance with the turnover to us of all physical materials that are covered by the temporary injunction?

A. Asked and answered.

Q. Not so. The court has ordered you to answer that question.

MR. DeMOISEY: I thought he had. I'd have to agree with my client. I thought he had. I thought he's gone beyond.

A. I turn to page 19. I represent it is what it is. It is what it is. In the context of a compliance with the court, "Do these three containers represent your compliance with the court order," on page 18. On page

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19, "It represents what it is. It is what it is." And then down further on page 19, line 12, answer, "I have no further answer."

Q. I want to ask the question again --

A. As a layperson I can't interpret what the order says and then get a different interpretation from the hearing. It just doesn't make any sense.

Q. I'm asking you a very specific question, Mr. Williams, that I believe the court in this case has ordered you to answer. And I'm going to ask it again in order to give you an opportunity to avoid the risk of contempt of the existing court order relating to an answer to the question. And the question is very specific. Do the two boxes and the envelope that were present at your January 12, 1994, deposition in your attorney's office constitute your compliance with the temporary injunction that requires you to turn over to me, among other things, all physical evidence that you -- excuse me, physical materials that you have in your possession from the time of your employment and after with the Wyatt firm?

MR. DeMOISEY: Let me interpose an objection at this point. My client I think has articulated very well that because of the temporary injunction, he is precluded in discussing many things that he otherwise

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obviously wants to. He is confused by the difference between what the written order says and what Judge Wine's comments were about it. He has made a layperson's best estimate of what he was required to come -- put into the box. Actually he went beyond that by turning over the computer. And that is what his compliance is at that time the best he understood the order to be. Now, to ask him further beyond that in my opinion under the constraints that he's not even able to ask me about things, because he can't talk to me about any facts one way or another, requires him to basically make these answers without benefit of counsel. And in view of the fact that, A, there have been allegations generically made that he has committed some sort of crime, B, that he may be -- there's been a suggestion made that he may be a part of a -- unwittingly a part of a criminal conspiracy. He has been asked by a United States Attorney, as I understand it, not to discuss that. You know, we now have a subpoena from another part of the United States government asking for his deposition. And it is to the point now where I've had enough. I mean, this is just ridiculous. He's not --

MR. BALLANTINE: I agree with that. Pardon my interruption, but I agree that it's ridiculous.

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MR. DeMOSSEY: Okay. And what we've got is a situation where he's not allowed. I can't advise him on anything. You know, he's done the best that he could in terms of the limitations that he's had. And until such time as we can get some clarification for it, I don't know how to advise him on how to answer. As an example, he has given you some examples of some public documents that he has garnered at my request since the injunction was put into place for the purpose of getting ready to come forward with a hearing before Judge Wine. Now, whether that's supposed to be included or not depends on how you read what the judge -- what the injunction says and also how you interpret what Judge Wine said. So, you know, I don't know how to advise him on that point.

The other part that I have a problem with in advising him in this matter, and I think where I get -- I guess I'm having a problem of all of this is, from day one my client has taken the position and continues to take the position that the plaintiffs in this case and most particularly the tobacco companies, choose to play within the rules when they care to, and when they don't, they go outside the rules. And I'm sitting here with a situation, as an example, where when I talked to Mr. Haynes, it was told to me that the documents in the

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box had been made public in many places, for the most part were all public, that it was more just a question of policy in terms of going after a paralegal who had divulged documents and that the documents themselves didn't amount to anything. Then I'm given a affidavit sometime later contradicting that statement. I have no idea what is in the box in terms of public documents versus not public documents. And I don't know if this -- if this is -- what we're having here is an attempt to keep what are nonprivileged, otherwise public documents away from me and use by my client when this injunction should not be in place to cover these, I think, maybe. And here we are a day short of what I perceive to be a statute of limitations, and I can't still talk to my client. And we're playing Duck Duck Goose over what is or is not supposed to be in this box. I can't advise him. He can't ask me. And yet you-all want to hold his feet to the fire on what I see is an anomaly to start with. And so at this point until such time as I can speak with my client, until he can speak with me and I can advise him, that's his answer. And any further attempt to go past that I would advise him and have this morning to take the Fifth Amendment simply, if out of nothing else, an abundance of caution. And I'm sorry that it comes to

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that. But I would submit that you cannot have your cake and eat it, too.

MR. BALLANTINE: You through?

MR. DeMOSSEY: Yes, sir.

MR. BALLANTINE: I don't know what the last sentence means in the context of the court order existing that says the witness shall answer the pending question. I have posed the pending question, and the Fifth Amendment has not been asserted or even mentioned until this morning or this noon. Now, to complete the record and in order to give the witness a chance to purge himself of what I perceive to be contempt of the existing court order that he shall answer the pending question, I'm going to restate it with specificity as to physical objects and physical things so that there's no basis at all in fact, speculation or otherwise for him to worry about, quote, information, closed quote. I'm dealing with physical, tangible things that were in two boxes and an envelope. And with respect to those my question is, do the physical things within the two boxes and the envelope constitute the compliance of the witness with the temporary injunction to the extent the injunction relates to physical things? That's the question.

MR. DeMOSSEY: The point of clarification, would

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you advise the client in clarification of that question, does that question include public documents he had either before or after the initiation of the injunction?

MR. BALLANTINE: It includes the physical things that are covered by the temporary injunction, which are things that he took from Wyatt.

MR. DeMOSSEY: By that statement are we -- are we excluding public documents?

Q. I'm excluding the Humana Building. I'm talking about a specific collection of materials that this witness took from the plaintiffs and that this witness was required by the temporary injunction to turn over to me pursuant to the terms of the temporary injunction. And I want to know if the physical things in the two physical boxes and the physical envelope constitute the witness's compliance with the physical things that he took while an employee and thereafter at the Wyatt firm. Very specific, very narrow, and it doesn't get out into the whole wide world that has existed since he was terminated.

A. He just added thereafter. That to me is an extremely incriminating thing. I don't quite understand that. What does he mean 'thereafter'? Could you advise me on that?

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Q. Mr. Williams, this is a deposition by me. My question to you is do the things within the two boxes and within the envelope constitute your compliance with the temporary injunction relating to the things defined in the temporary injunction?

MR. DeMOISEY: We're right back to the same place.

Q. No. I want the witness to answer. I'm not going to get into a legal argument that you've made several times to the court unsuccessfully. There is existing a court order that says this man shall answer the question. The question is do those represent your compliance with the temporary injunction, and that's the question you've been ordered to answer. And I may say, sir, before you respond, if you don't respond to that pending question, I'm going to take the position with the judge of this court that you're in contempt of his order that you shall answer that question.

A. I have answered the question on page 19 in the following deposition.

Q. I'm asking you to answer the question today, not reference back to it.

A. Represents what it is. It is what it is. And I will assert the Fifth Amendment privilege from the point of view that I have several problems in dealing

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as a layperson, about understanding what the meaning of a U. S. Attorney's probe into a criminal investigation might or might not involve me. And, therefore, after I've answered just as I've answered, I'm going to assert the Fifth Amendment privilege.

Q. And that's your answer to the pending question?

A. That is my answer.

Q. To your knowledge are there any physical things that you took from the Wyatt firm that are not presently included within the two boxes and the envelope?

A. Same answer. I assert the Fifth Amendment privilege.

Q. To your knowledge are there any copies of materials that you took from the Wyatt law firm that are elsewhere than within the two boxes and the envelope?

A. Same answer. I take the Fifth Amendment privilege.

(SHORT RECESS)

Q. Mr. Williams, to complete the record on these matters, if I ask you any further questions -- I've asked you several specific ones, and you've given your answer and your claim of the Fifth Amendment. If I ask you other questions intended to determine the existence

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and location of other materials covered by the temporary injunction in order to ascertain and ensure compliance with the temporary injunction, would you give the same answer and make the same plea?

A. I don't quite understand the question. Would you restate it in another way?

Q. You have claimed in answer to several previous questions that your answer stands and that you claim the Fifth Amendment as a privilege against your being required to answer. And in order to shorten this, I want to see if you will give the same answer, that is, 'my answer is what it is', and make the same plea of the Fifth Amendment privilege if I asked you other questions intended to determine the existence and location of materials covered by the temporary injunction which you took from the Wyatt firm in order to ascertain and ensure compliance with the temporary injunction?

MR. DeMOISEY: Perhaps I can help that part if I may. To the extent that there -- that your question would involve an interpretation of the injunction and based on that interpretation on behalf of my client to do or not do certain things, to the extent the question types that you have raised would incorporate the utilization of that injunction order,

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then I would -- until such time as we, A, have it clarified and/or modified and, B, until such time as I can converse with and talk with my client on these issues, then I would advise him to take the Fifth Amendment. I assume that he would based on that advice. Does that help you?

Q. Do you accept that advice?

A. Yes.

Q. And that statement he just made?

A. Yes, sir, I do.

Q. For the record I want to make exhibits to this transcript the materials that you handed to us. And I'll try to keep them in the same order in which you handed them to us. I'm not sure they'll be exactly the order. The first one is a multipage document that shows on its face, the first page, received August 15, 1977, A. J. Stevens, and we'll mark that as Deposition Exhibit 1.

(WILLIAMS DEPOSITION EXHIBIT NO. 1 WAS MARKED)

Q. The second one is a photocopy of portions of a book that has a photocopy of a title page, The Causes and Effects of Smoking, apparently by H. J. Eysenck, E-y-s-e-n-c-k, Ph.D., D.Sc. Make that deposition Exhibit 2.

(WILLIAMS DEPOSITION EXHIBIT NO. 2 WAS MARKED)

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Q. The third one is a photocopy of the spines of some books or publications that appear to be Cigarette Labeling and Advertising Part I, 1965, Cigarette Labeling and Advertising Part II, APP., which I believe stands for appendix, 1965, and then something that has handwritten on it, Y4 C73/2, U. S. Congress Hearings C48. We'll make that Deposition Exhibit 3.

(WILLIAMS DEPOSITION EXHIBIT NO. 3 WAS MARKED)

Q. The next one is a copy of H.R.2147 from the 103d Congress, 1st Session.

(WILLIAMS DEPOSITION EXHIBIT NO. 4 WAS MARKED)

Q. The next one is a photocopy of portions of a book or publication titled Legionnaires' Disease, in quotes, with the further subtitle, Hearings Before The Subcommittee On Consumer Protection And Finance and so forth, bearing a serial number 94-159. Make that Deposition Exhibit 5.

(WILLIAMS DEPOSITION EXHIBIT NO. 5 WAS MARKED)

Q. The next one is United States Patent, Larson, et al, number 4,215,706, August 5, 1980, Nicotine Transfer Process. Make that Deposition Exhibit 6.

(WILLIAMS DEPOSITION EXHIBIT NO. 6 WAS MARKED)

Q. Last one produced by the witness with respect to the testimony he earlier gave is United States Patent 3,524,451, Process For Increasing The Filling Capacity

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of Tobacco. Make that Deposition Exhibit 7.

(WILLIAMS DEPOSITION EXHIBIT NO. 7 WAS MARKED)

Q. Just for logistical purposes, Mr. Williams, are these the only copies of these documents you have, so that you need to carry these back with you after we make photocopies here, or is this an extra set of photocopies we may keep?

A. Those are -- I would -- you can take the copies of those. I would prefer that you make your own copies. And especially on the original copy which you've written on, which is from the Documents Room, Energy and Commerce, and I'd like to keep that one. It's an original.

Q. Which one is an original?

MR. DeMOISEY: I think that's the Congress bill.

A. The short one.

Q. Oh, the bill. All right. Well, then with stipulation of counsel, what we'll do, the Court Reporter obviously has marked her handwriting and the numbering on each of these documents. We'll let her take custody of them just long enough to complete the photocopying process. One set of copies will be attached to the original. I will want two separate sets. These, quote, originals, unquote will be

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returned to Mr. DeMoisey as counsel for the witness. And if you want a copy, then you can tell her.

MR. DeMOISEY: That's fine.

MR. SMITH: Can I have one more word with you?

MR. BALLANTINE: Yeah.

(SHORT RECESS)

Q. In one of your answers you mentioned a Mr. -- I wrote down Valenti. Do you know how to spell Mr. Valenti's name?

A. I believe it's -- let's see. No, I don't. I really don't.

Q. It's your understanding he works --

A. I understood the man on the phone represented himself as United States Attorney. I think he said Tony Valenti, and I believe he did spell it. And he either spelled it with an I or a Y, and I don't know which.

Q. And I believe you said that the office of the U. S. Attorney from which he represented himself was in Brooklyn, New York?

A. It was in Brooklyn, New York, yes, sir. Some -- I'm quite sure it was Brooklyn, yeah.

Q. Do you recall approximately when you talked with him?

A. Sir, I really don't know if I can answer these

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questions. I was told not to go any further than that. I mean, I could tell you that I suppose I was contacted and for the reasons of asserting the Fifth Amendment. That is one of the reasons. But I just don't know if I can get into beyond that and what might be considered a criminal investigation. And I certainly understand that there is a possibility that I could be involved as working on some projects that might have been ongoing into what is the theory behind this case. I speculate on what that is. But I certainly do believe that I can give you his name. And I can't spell it correctly. That's as far as I think I need to go.

Q. Well, I'm not going to on this record debate whether you're right or wrong in your reasons. The -- my question is, for the reasons you've just outlined do you decline to tell me when -- decline to tell me approximately when you talked to Mr. Valenti?

A. I believe if the judge ordered me under the restraints that are offered in this, if he ordered me to tell any kind of information, it would be a real conflict for me to try to determine from a layman's point of view exactly who is -- which one is the top gun and why, you know, you would assert something in an ongoing criminal investigation, as I understand it to

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be, and without sufficient advice of counsel.
Q. For those and the earlier reasons –
A. But I don't know that there is an answer to that unless I can consult with counsel on it.
Q. For what you've just said and earlier do you decline to answer the question about when you talked with Mr. Valenti?
A. I'd have to assert the Fifth Amendment privilege on that.
Q. No further questions at this time.
MR. DeMOISEY: While we're on the record I'd like to bring up a couple points if we may. The first one I think we can hopefully dispose of fairly easily. That is the issue of Mr. Williams' computer. It's been since January 12. And originally you said by Friday of that week. I know we've been involved in another matter up in Cincinnati that delayed it. Here we are now into March. I don't know that this needs to be a part of the record unless you just want it to be. He did go get an estimate from the same place that he bought that computer as to what a similar computer would cost to replace. And I will give that to you. We would like to have a resolution to this computer situation. And I think we've been more than patient about it.

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A. You also asked for the identification of that computer, and that identifies it, and it's an MMG. And it's a hand-made computer. It's an IBM clone. I think I said that in that deposition. I would wonder at this point if I might be able to examine where this computer is and for the purposes of safety. Is that possible that we might be able to look at that?
Q. No, sir, not as far as I'm concerned. We'll make this estimate part – make it Deposition Exhibit 8. And it will be returned to your counsel along with the copy – the other documents that have been so marked. Then I'll come back to the other issue.
(WILLIAMS DEPOSITION EXHIBIT NO. 8 WAS MARKED)
MR. BALLANTINE: I will answer your question or comment for the record, Mr. DeMoisey, by saying that this should go a long way to bringing this to a prompt close. I, as lawyer without authority at the moment, am going to take this to my client and try to bring this to an early, early end.
MR. DeMOISEY: Okay.
MR. BALLANTINE: I cannot guarantee obviously any more than you can guarantee what a client is going to do. But I can tell you that I will recommend that we bring this issue to a conclusion by promptly dealing with the computer issue, get that behind us.

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MR. DeMOISEY: Okay. And for a clarification, I think my client was asking if he could see the sealed box in which the computer was turned over to see that it's been maintained that way, and you're saying no?
MR. BALLANTINE: I'm saying no, he cannot see it. I don't think that's in the scope of the order. I will represent to you and to the court and to your client that the computer is still in the sealed box in the condition in which I received it in your office.
A. And it was transported. There were some questions that I had about the way it was sitting and how it got here. And I guess you're representing that it's still here, and that it's.
Q. Sir, this is your deposition, not mine.
A. I'm just trying for a clarification of what he was trying to clarify.
MR. DeMOISEY: The other point that I wish to – that I wanted to raise is about the hearing that was originally scheduled for March 8th. Do we have a – I know you said when I called and talked to you the other day that perhaps we could bring it up when Mr. Smith was present. I note Mr. Smith is present.
MR. BALLANTINE: I've talked with him about this earlier, and we are going to deal with that. I see no

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reason to encumber this record talking about dates for the hearing. When we got that date, I told you and the judge's secretary that all this was subject to my confirming his availability, which he is not on that particular day, which is why I dictated long distance the letter to you that said we got to get another date. So we lawyers can deal with that. Call the judge's secretary, and I suspect she's going to be at lunch, looking at the hour of 12:45, but we can certainly deal with that. I don't see any reason to –
MR. DeMOISEY: Well, if you would indulge me, my problem is that my co-counsel is not going to be next available into the week of March 20 something, which is a problem in terms of it's another two or three weeks that we are still under this impediment. And certainly when the plaintiffs have asked that we appear on very short notice to do the business that they wanted, we did. I would ask plaintiffs to reconsider as to whether Mr. Smith could change his commitment, or I'm under the impression his law firm is a rather large one. Isn't there someone else who could stand in his place? I note that when I was in a similar position and asked that the last hearing be passed until my co-counsel could be present, that fell on deaf ears. I would like to go forward on March

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8th.
MR. BALLANTINE: I know you would. Mr. Smith is here, and as a big boy, he can certainly speak for himself. There's been a lot of other postponements for various and sundry reasons, all legitimate.
MR. DeMOISEY: I'm not saying. I'm just saying that, you know, we all have our problems. And we've been attempting to be as most accommodating as we could, you know, even to the point, as I recall, at least on one occasion where you called and said could I be in court, you know, within a very short period of time, and we were or I was.
MR. BALLANTINE: Because the rules required me to do so.
MR. DeMOISEY: Oh, I understand that. I'm just saying we need to go forward for the benefit of my client. And to postpone it, even when the court has I think gone out of its way to give us a date, simply because -- I don't mean to depreciate Mr. Smith's importance to this case -- simply because one co-counsel can't be there when there's a whole big law firm. They can run a substitute in, I would imagine. We'd like to move forward on that.
MR. SMITH: Fox, I hear the big law firm argument all the time. Unfortunately, my cases are

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just like your cases. I handle them, and nobody else does. And so I'm no different than a sole practitioner when it comes to my cases. And I'm the lawyer who's handling this case for this client in my firm and no one else. So there really isn't anyone else to substitute for me in that. I have a long-standing prior commitment that week that I will not be able to attend the hearing. The client has asked that I do attend the hearing along with Jack. And I will work as best I can to arrange another time when everyone is available. But I think it's fair to say that all of us have tried to cooperate in scheduling things in this. I will certainly endeavor to continue to do that, but I can't do it on the 8th.
MR. DeMOISEY: Maybe I have misconstrued the circumstance. I thought that Mr. Ballantine represented both plaintiffs and you were co-counsel representing both plaintiffs. Is it really one represents one and one represents the other?
MR. SMITH: I don't believe I made a statement one way or the other.
MR. DeMOISEY: No. I know. That's why I'm asking the question.
MR. SMITH: I think we both represent both. It's irrelevant to this inquiry.

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MR. DeMOISEY: Well, I think it is. I mean, you know, if -- certainly I've known Mr. Ballantine a long time. Certainly to say that he's competent counsel would be very much an understatement and believe he can represent both interests. He's represented to me they are the same.
MR. BALLANTINE: The problem is that you're trying to say you need to accommodate your co-counsel, and yet I can't accommodate my co-counsel, and that just doesn't make sense. We've got a very major motion that is pending of significance -- quite a bit of significance to both sides of the versus in this lawsuit. And when the date was set, it was specifically set subject to the calendar of Gordon. I called him immediately after we got the date, and he said, "I can't do it." So I let you know as quickly as I could that he couldn't do it.
MR. DeMOISEY: I understand that. I'm saying when I had new co-counsel to come on board and asked that that particular hearing be passed until he could be present, it didn't work for me.
MR. SMITH: That was an issue that had been preexisting, and there had been a previous hearing set before co-counsel had even been proposed. It does seem a little bit -- well, I'll stop there.

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MR. DeMOISEY: I can see there is some slight difference but to my mind not a real big difference.
MR. SMITH: There was a time element that we thought was significant to that which was a factor in that situation.
MR. BALLANTINE: Let me suggest, we can argue with each other and just make a lot of money for Nancy, and she loves it. You're not going to persuade us, and we're not going to persuade you. We cannot keep the hearing date on the 8th at 4:30. So we'll have to get another date.
MR. DeMOISEY: Let me ask one other question on the record, and then it's very short. And let me preface it by saying I'm raising the question on the record. I do not expect an answer immediately. I perceive there is the potentiality of the statute of limitations date coming up tomorrow. Do you-all have any -- put it this way. Would you-all agree to voluntarily extend the statute of limitations date? And as I said, that's a question obviously that deserves some consideration and obviously contacting your respective clients. I just pose it. If you will, you will. If you won't, you won't. Obviously not being able to talk to your client under a temporary junction, trying to file a lawsuit that you can't talk

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about is a little difficult.
MR. BALLANTINE: We hear your inquiry. We will answer when appropriate.
MR. DeMOSSEY: Thank you.

(WITNESS EXCUSED AT 12:55 P.M.)

*** *** ***

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STATE OF KENTUCKY
COUNTY OF JEFFERSON

I, NANCY L. NUNNELLEY, Notary Public, State of Kentucky at Large, do hereby certify that the foregoing deposition of MERRELL WILLIAMS, JR., Ph.D., was taken at the time and place stated in the caption; that the appearances were as set forth in the caption; that prior to giving his testimony the witness was first duly sworn by me, that said testimony was taken down by me in stenographic notes and thereafter reduced under my supervision to the foregoing 33 typewritten pages and that said typewritten transcript is a true, accurate and complete record of my stenographic notes so taken.

I further certify that I am not related by blood or marriage to any of the parties hereto and that I have no interest in the outcome of captioned case.

My commission as Notary Public expires July 10, 1995.

Given under my hand this the 7th day of March 1994, at Louisville, Kentucky.

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NO. 93CI-04806 JEFFERSON CIRCUIT COURT DIVISION 14

ROBERT L. MANDOK, et al PLAINTIFFS

VS DEPOSITION FOR THE PLAINTIFFS

WHEREOF DEFENDANT BY HIS ATTORNEY, J. FOX DeMOISEY DEFENDANT

*** *** ***

DEPONENT: Merrill Williams, Jr., Ph.D. (January 12, 1994)

Nancy L. Nunnelley, RPR
9614 Chaille Drive
Louisville, Kentucky 40299

APPEARANCES:

For the Plaintiffs

John T. Ballantine, Esquire
Ogden, Newell & Welch
1300 One Riverfront Plaza
Louisville, Kentucky 40202

For the Defendant

J. Fox DeMoisey, Esquire
1210 Starks Building
Louisville, Kentucky 40202

***

The deposition of MERRILL WILLIAMS, JR., Ph.D., taken in the offices of J. Fox DeMoisey, 1210 Starks Building, Louisville, Kentucky, on Wednesday, January 12, 1994, at about the hour of 1:00 P.M., said deposition being taken for use in accordance with the Kentucky Rules of Civil Procedure.

*** *** ***

(WILLIAMS DEPOSITION EXHIBIT NO. 1 WAS MARKED)

MERRILL WILLIAMS, JR., Ph.D., after first being duly sworn, deposed and said as follows:

EXAMINATION BY MR. JOHN T. BALLANTINE

MR. BALLANTINE: You are Merrill Williams, the defendant in this action?

MR. WILLIAMS: I am MERRILL WILLIAMS, JR., Ph.D.

Q. And you are the defendant in Civil Action No. 93CI-048067

A. (Examining document). Yes, sir.

Q. Mr. Williams, I have just handed to you a copy of the court's order and temporary injunction that was signed by him on January 7 and bears the indication at the end of that order that it was entered in court on January 7, 1994. And I have had the court reporter premark for identification and I want to make an exhibit to this deposition a copy of that order. It's premarked as Deposition -- excuse me, Williams

Deposition Exhibit No. 1. Have you read this order recently?

A. Yes, I have read it.

Q. Have you brought with you to this deposition room the materials referred to in that order?

MR. DeMOISEY: Let me stop at this point. At this juncture, we are here in order to comply with the court's order that's already been made Exhibit 1. That order says that Mr. Williams is to put the above material described in that order in a sealed box, and at this point in time Mr. Ballantine is to hold that material under lock and key. That's what we're here to do. There is a sealed box that Mr. Williams is submitting to Mr. Ballantine pursuant to this order. There is also a box that contains the essential parts, and I'm not going to get any more technical than that, of the computer that Mr. Williams -- it's Mr. Williams' computer. It has been brought here because of the deposition and some discussions that counsel and I had. Neither of us -- or at least I'll speak for myself, are not computer whizzes. It is possible, although my client doesn't think that such is so, but it is possible that some of this material or reproductions of some of this material contained in Judge Wine's order of January 7th could conceivably be

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1 retained in some sort of memory bank or something of
2 that nature in this machine. We don't think that is
3 true, but it may technologically be possible. And in
4 that sense we have also brought that machine. Although
5 we don't think it has that capability, it is, I
6 suppose, technologically possible at least as far as
7 the three of us know about it. We're not compelled to
8 give a deposition by this order. We're not going to
9 give a deposition by this order. But we are going to
10 comply, and this is Mr. Williams' compliance with that
11 order. And I did let it go far enough so that he could
12 acknowledge his receipt of that order.
13 With respect to the computer, after talking
14 with my client and on further reflection, we were
15 trying to figure out if there was any way to test to
16 see if there was any way to access this computer if it
17 has any kind of stored memory or whatnot. The problem
18 that that creates is, as Judge Wine has ordered, the
19 legitimate sphere of protection at this point is
20 whether or not this machine contains any reproductions
21 of anything that belongs to the law firm or to the
22 tobacco company. But in the process of down-loading
23 it, if it has that capability, then likewise you're
24 going to get much more than that. So it brings up the
25 dilemma of what to do about that possibility if this

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1 thing has this capability at all.
2 And secondly, we have the problem that my
3 client would -- needs to have access to a computer for
4 his own personal needs and also to help in this case.
5 So the question becomes, you know, what to do about
6 that. I know we talked about possible solutions over
7 the phone. One other occurs to me that may be the best
8 solution of all. If your client would be willing to
9 pay over to Mr. Williams a fair market value for this
10 machine because it contains -- it might contain
11 information that your clients are concerned about, it
12 might also contain -- if that's retrievable, it would
13 also spit out other information that is the property of
14 my client. The other option to this would occur to me
15 is simply to destroy the machine. That way there would
16 be no possibility that there would be any dissemination
17 of any information no matter who it belonged to.
18 MR. BALLANTINE: You through?
19 MR. DEMOISEY: Yeah. And we would offer that
20 as a suggestion.
21 MR. BALLANTINE: Taking them in reverse order,
22 initially that -- the destruction option has some
23 feasibility and plausibility in my mind, but there may
24 be some components of that that on this initial
25 discussion doesn't hit me. So I'm not ready to agree

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1 to that. I am --
2 MR. DEMOISEY: Fair enough.
3 MR. BALLANTINE: -- ready to agree that I certainly
4 will present that possibility to my clients, and that
5 may furnish a way around this whole problem of what to
6 do about the computer.
7 MR. DEMOISEY: I think as lay people we -- at
8 least I instinctively distrust the things, because I'm
9 not quite sure what they can and cannot do.
10 MR. BALLANTINE: I guess that's part of why it's
11 initially intriguing to me, because I have basically
12 that same feeling. Let's just get rid of it, and then
13 the problem doesn't exist.
14 MR. DEMOISEY: Yeah.
15 MR. BALLANTINE: The -- so as to the computer, to stick
16 with it for the moment, I don't know how heavy it is.
17 I see it's on a dolly here. But I would want to take
18 possession of it till we resolve this problem. As I
19 see, it's in a sealed box, and I certainly will not
20 break that seal or anything else until we get some
21 resolution of how we're going to deal with the
22 computer.
23 As to the giving of a deposition or not, it's
24 our position that in order to satisfy the court and
25 ourselves that there has been compliance with the

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1 court's order, I'm looking at a sealed box, and I ask
2 the question, the pending question which counsel
3 intruded was, have you brought with you the materials
4 referred to in the order. At this moment I do not have
5 this witness under oath saying that that is so or not
6 so. And for all I know, having lifted the box just as
7 counsel and the witness were coming into the room, it
8 is relatively light. And it could contain anything as
9 far as I know. And I have no statement under oath from
10 the defendant that this is his compliance with the
11 court's order. And I think I'm certainly entitled to
12 that. I think I'm entitled to a lot more, but I would
13 like to get an answer to that basic question, does the
14 box containing the computer -- and I'll accept
15 counsel's representation on the computer. It looks
16 like a bigger box that would carry a computer. And the
17 other cardboard box that's on top of it contain all of
18 the material referred to in the court's order of
19 January 7, 1994, required to be produced pursuant to
20 that order?
21 MR. DEMOISEY: And I appreciate why you're
22 asking the question. My problem with it is simply
23 this. We are compelled to produce a box that complies
24 with the court order sealed. And I'm willing, you
25 know, and my client is sitting here. That is the box

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he has produced. It is sealed, and that is his compliance. And that's -- and I don't see anything in this order that allows this thing to be turned into some sort of discovery situation so that you or your clients can know what's in here, what's not in here, whatever. This is his compliance, and we'll stipulate this is his compliance. But beyond that I think it goes beyond the order of the court to start to turn this into a discovery as to what my client's compliance is. I mean, he has the order. I went -- he knows what it says, and this is his compliance. My understanding of Judge Wine's concern was, at least during the pendency of where we are at this point, that he wanted the material that belongs to your clients and any reproductions thereof to be in your care and custody, not for your use, but for its physical possession. And this is my client's compliance. If at some point in time -- I mean, it's not -- it's my position that very likely within the next few days, depending upon the other possible things that we can do, that there may be an order that requires the return of this back to him. And I just don't think it's -- certainly we're not compelled to answer those questions. And at least for today's purposes this is our compliance as per the court's order.

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MR. BALLANTINE: That's counsel's statement.

MR. DeMOISEY: Yes, sir.

MR. BALLANTINE: And I'm taking the position that I have a right to have the witness -- the client's statement under oath yes or no. I'm not -- at this moment not trying to get into what's in the box. I certainly intended to do so, and I understand what you're going to instruct your client. But I think at the bare minimum I'm entitled to have a statement under oath from the client that, 'yes, this is my compliance', period. That's all I'm asking at the moment.

MR. DeMOISEY: I have no problem with him identifying this box. I guess we can mark it. We've started marking everything else. And may I suggest that he signify his compliance by signing the box and dating it and answering that this is his compliance.

MR. BALLANTINE: With that add-on, yes.

A. You want me to do that now?

MR. DeMOISEY: (Nods head affirmatively).

MR. BALLANTINE: And again, so there's no misconstruction of what's just occurred, his signature and a date of today of January 12, 1994, his signature on that box will constitute his certification in answer to my question that the two boxes sitting on the dolly that I see over there, plus the envelope that you and I have exchanged on October 7, 1993, and January 10 of 1994, that those three containers constitute your client's compliance with the court order. Is that a correct statement?

MR. DeMOISEY: With one addition. I think it would also be fair to say that the return of the box of documents back in July of this year -- of 1993 and I also believe a copy of this narrative was delivered to the law firm in September of '93. I think those also would be within the realm of the court's order. But obviously having returned them to the law firm, he doesn't have physical control over those anymore. So with that addition, I think that's a fair statement.

MR. BALLANTINE: Okay. I make no challenge, in fact, we've pleaded that we got back a box and a package indicated to be a box of documents and a narrative. And I was focusing on the court order, and the court order came long after those events had taken place. I'll accept your amendment. Now, back to the question, and this just takes a yes or no, Mr. Williams. Don't answer it until your counsel has a chance to say what, if anything, he wants to say. Do you agree, sir, that your signature on the two boxes and dated signature on the two boxes and on this envelope will constitute your

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representation that these three containers are your compliance with the court order? That just takes a yes or no.

A. Is that --

MR. DeMOISEY: Well, obviously he wants to talk to me about something. We'll adjourn for a second.

A. Yeah, please.

MR. BALLANTINE: I can't physically lock the door and keep you in or stand in the doorway. I really do not believe there's any right of counsel to go talk to his client during a deposition, whether it is a deposition or whatever we're in the process of right here. It takes a simple yes or no, that the three containers are your client's compliance with the court order. Yes, no?

MR. DeMOISEY: Well, that having been said and recognizing that throughout this whole case that my ability to communicate with my client has been severely retarded, still in all, I appreciate your objection. But my client wants to ask me a question. I don't know what it is. But I feel that he has a right to ask me that question. And I don't think that it has to be on the record or within earshot of counsel.

MR. BALLANTINE: I don't think he does once the

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1 deposition is started. And it's -- we're in a court
2 proceeding here. We're not in the Congressional
3 chambers where counsel and client confer back and
4 forth. And I think under the rules and cases you're
5 not entitled to a conference about a pending question.
6 MR. DeMOISEY: Well, I'm -- I suppose my
7 ignorance is showing. I'm not aware. If you want to
8 point me -- we've got a whole library, and you want to
9 point me to where that is, I'm happy to look at it.
10 But it seems to me that particularly in the types of
11 questions that this whole context is in and also
12 recognizing the restraints I'm already under, I don't
13 even know that I can answer his question.
14 MR. BALLANTINE: You may not.
15 MR. DeMOISEY: I don't know what it is.
16 MR. BALLANTINE: I recognize that. But my point about
17 this whole play and this whole gamesmanship is we've
18 got three packages that have been represented by
19 counsel based on what his client has apparently told
20 him that supposedly were the compliance with the
21 court's order. I put the question directly to the
22 witness, the defendant in this case, and specifically
23 advised him it took only a yes or no as to whether
24 these three containers constitute his compliance with
25 the court order. And that's all it takes, is yes or

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1 no, and he doesn't need advice of counsel to give an
2 answer to that question.
3 A. May I respectfully point out that I'm going to
4 have to leave the room. I've had heart surgery. And
5 I'm going to have to leave the room right now, Fox.
6 MR. DeMOISEY: All right.
7 (MR. WILLIAMS LEFT THE ROOM)
8 MR. DeMOISEY: I guess the record should
9 reflect my client has left the room, but I have not.
10 MR. BALLANTINE: Sure.
11 MR. DeMOISEY: Off the record.
12 MR. BALLANTINE: Yeah. That's okay.
13 (COMMENTS OFF THE RECORD, AND MR. WILLIAMS
14 RETURNED TO THE ROOM)
15 MR. BALLANTINE: Let's go back on the record. Let's
16 take this one step at a time, and maybe this will make
17 it the easier way. I'm going to ask the witness at
18 this point to date and sign each of the three
19 containers that have been presented in this room with
20 the colloquy that took place among counsel and the
21 occasional comment by the witness, not much, but I
22 think there is something on the record. But I'm asking
23 the witness at this point with his counsel present to
24 date and sign each of the three containers that are in
25 this deposition room.

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1 A. Date and sign each of these containers, this, that
2 and that in this -- and that's -- okay. Just shall I?
3 MR. DeMOISEY: Right there.
4 A. It's the 12th.
5 Q. January 12, 1994.
6 A. 1-12-94, Merrill. (Marking on document).
7 Q. Now...
8 A. (Marking on box).
9 MR. DeMOISEY: This space here.
10 A. (Marking on box).
11 Q. Now, these questions are solely to verbally
12 identify where the signatures were placed. The one on
13 the envelope that contains the narrative is
14 self-explanatory. The one on the computer box is on
15 what is the top of the box as it presently sits on the
16 dolly. And in an off-the-record conversation the
17 witness said that he is not sure whether the -- what
18 we're looking at as the top of the box does represent
19 the top of the computer or not. And I will say at this
20 point, unless I get differing instructions from counsel
21 or the witness, it will be retained in this
22 perspective, that is, with the signature of Mr.
23 Williams on the top of the box as it is rested wherever
24 it rests. The third container has the signature of Mr.
25 Williams on what I believe was a side of the box, but I

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1 will ask for identification if there is a top or a
2 bottom to this brown fiberboard box that this container
3 should be kept in for purposes of the contents.
4 A. Well, the top is I believe on this here.
5 MR. DeMOISEY: This is top.
6 Q. Could I get just for --
7 A. Correct side of the top would be this one, and I
8 don't think there would be anything tarnished or
9 changed.
10 MR. DeMOISEY: I think that the way to
11 identify this as being the top is the crease where the
12 two top pieces come together is much wider than on the
13 bottom side.
14 MR. BALLANTINE: That's fine. And also, it seems to be
15 fully covered with tape. The bottom does, also.
16 MR. DeMOISEY: On the top and bottom.
17 MR. BALLANTINE: Yeah.
18 MR. DeMOISEY: That's why we signed it on the
19 side.
20 A. However, the computer is not fully covered with
21 tape.
22 Q. We're talking about the brown box now.
23 A. Yes. I understand that. And I would like to
24 comment on the computer and which side I'd like to
25 state that I would prefer it to stay on if that's

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possible.
Q. I've asked you to do that.
A. The answer to that is I prefer it to be put on the side, any side, simply because I am not certain that it would be in a good condition if it was on the wrong side, upside down, rather than I think it would be safer to have it on a side. Any side will do.
Q. You place it in whatever configuration you want, and I will use every effort to keep it in that configuration.
A. Okay.
MR. DeMOISEY: How about that?
A. That sounds like it's a little bit safer.
MR. DeMOISEY: It might help to identify the 'up' on the brown box would make it consistent with Mr. Williams' signature appearing in conformity with up and down.
MR. BALLANTINE: And to avoid all of this, if counsel will agree, I will simply write 'up' and put an arrow to point up.
MR. DeMOISEY: Sounds good.
Q. (Marking on box). And on the computer box I will -- right next to the letters NEC, I will write top. (Marking on box). Although I understand that the computer may, in fact, be on its side, the box will

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remain in that configuration with that part marked top. Now, those logistics completed, I want to come back to the question that led to our discussion. Do these three containers represent your compliance with the court order?
A. Excuse me, counsel. That's for a later point I'd like to ask you about.
Q. There's a pending question. You were looking at that. You want to hear it back so you can decide whether or not to instruct him not to answer?
MR. DeMOISEY: The question, as I understand it, is this the compliance pursuant to the court order. And I would simply point out, you know, I don't know what the problem is, why the necessity to ask him the question or why my client obviously feels some reluctance to answer. And I have not been able to talk to him pursuant to counsel's objection. The only thing I can point out is we are here today pursuant to Judge Wine's order of January 7. He has signed two boxes and an envelope. And it is what it is.
MR. BALLANTINE: You through?
MR. DeMOISEY: Uh-huh.
MR. BALLANTINE: The question is pending.
MR. DeMOISEY: If you want to answer it, you can. If you don't, you don't have.

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A. It represents what it is. It is what it is.
Q. That doesn't answer the question. The question is, do these three boxes represent your compliance with the court order?
MR. DeMOISEY: He's answered it.
MR. BALLANTINE: No, he hasn't. It is what it is could be yes or no depending on whether it does comply or it doesn't. I'm asking the witness do these three boxes represent his compliance with the court order.
MR. DeMOISEY: Do you have any further answer you want to give?
A. I have no further answer.
Q. Well, I will state at this point I'm going to move for an order compelling an answer to that question, and I'm going to move for sanctions in their fullest regard.
A. Excuse me, Counsel. I have to leave the room.
(MR. WILLIAMS LEFT THE ROOM)
MR. DeMOISEY: All I can tell you, Mr. Ballantine, certainly you have the right to do that. And I don't know why you don't want me to talk to him during the course of the deposition. I've been as helpful as I can be. I'm not quite sure. Apparently there was some great importance that you attach to this. Apparently my client has some great importance

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that he attaches to it. I'm not at all sure that his reluctance is primarily based upon your insistence. It seems to me that we were here pursuant to agreement to comply with the court's order. There are three -- two boxes and an envelope. He's signed them. He's dated them. That was the purpose of this hearing. I don't know what -- maybe I'm missing.
MR. BALLANTINE: Well, what you're missing is that but for your statement earlier, there is nothing that says that the envelope, the two boxes, the envelope and the two boxes are the compliance with the court order. I don't know if there are out in his car or in some other room that he hasn't showed you where they are other boxes, other documents or other things that represent compliance with the court order. I don't know that what are in these three containers bear any resemblance to the issues in this lawsuit or to the court's order. And I believe for purposes of my understanding, since I do not under the court order at this point have a right to get into those boxes nor the envelope, I don't have the ability to determine if there is anything in there responsive or not. And, therefore, I'm entitled at least to have the witness say yes or no to the pending question, it is or it isn't compliance. And if it isn't, then we got to work out how we're going to get

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the rest of the compliance. If it is, then subject to further fighting about my right to inquire in detail, our proceedings at the moment are concluded.

MR. DeMOISEY: Well, all I can tell you is, Mr. Ballantine, it's an imperfect world. I mean, you're now seeing some of the frustration that I have when I'm not allowed to look at any of this stuff, either, and now I'm not allowed to talk to my client.

MR. BALLANTINE: It's no frustration to me.

MR. DeMOISEY: I know it isn't. But this order basically says that you're not able to see it, either.

MR. BALLANTINE: I –

MR. DeMOISEY: You're just in possession of whatever he thinks is the appropriate compliance.

MR. BALLANTINE: And I'm entitled to know that he thinks this is the appropriate compliance. That's what the pending question says.

MR. DeMOISEY: The fact that you have it is his act.

MR. BALLANTINE: No. It's his act. But I don't have any –

MR. DeMOISEY: Well, ultimately if, in fact, this whole thing blows up for some reason and there is noncompliance, some stretch of the -- of whatever that

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is, then Mr. Williams is going to have to deal with that issue at that time. You know, I went ahead, and I wanted him to acknowledge that he had receipt of the order. He said he's read it. We're here today. He's -- we've done the computer. We've done the box. We've done the statement. But what's incredible to me is -- whole case is fairly incredible, but, you know, we're tossing around this envelope, and your clients won't let you see it. The court won't let me see it. I don't even know what's in the envelope.

MR. BALLANTINE: I don't, either.

MR. DeMOISEY: And you don't, either. So I don't know, you know, what all of that is. And I don't know what your clients have done with the box of documents. But apparently the court has said -- has been very careful of your clients' rights and apparently very carefully drafted this to say that, you know, he's just preserving the status quo. And his compliance is what it is.

MR. BALLANTINE: Well –

MR. DeMOISEY: And obviously –

MR. BALLANTINE: -- we're just saying the same thing over and over again.

MR. DeMOISEY: I know. I think we've just reached a loggerhead, and perhaps maybe we do need to

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go back to the court to –

MR. BALLANTINE: I think in order to say –

MR. DeMOISEY: You have your problems with the order. I have mine. Maybe that's the better forum to discuss it.

MR. BALLANTINE: In order to set the record of this proceeding, I think I do need to get him to say that he declines to answer further the question about whether this is or is not compliance. You have said at one point and he's said it is what it is. And I think –

MR. DeMOISEY: I think we went further, and you asked him again, and I said, "Do you have anything else further to answer to his question," and I think he said no or something to that effect. I think we've already been over that one. I'm beginning to get a little concerned about my client's health actually. I mean, this is the second time he's left the room. I know he was very much agitated before you got here. And it doesn't look like it's getting any better. The only thing I can –

MR. BALLANTINE: Let's interrupt just a minute. Let's make sure the reporter did get that exchange that you were talking about. I heard it, and I'm confident if I could hear it, she could. But let's make sure it's in the record, and I may be willing to let that stand.

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MR. DeMOISEY: Okay.

(THE TESTIMONY COMMENCING ON PAGE 18, LINE 21 AND ENDING ON PAGE 19, LINE 12 WAS READ BY THE REPORTER. THERE WERE COMMENTS OFF THE RECORD, AND MR. WILLIAMS RETURNED TO THE ROOM)

MR. BALLANTINE: In light of the state at which this proceeding stands, I see no sense in counsels' debating in front of a court reporter to take down our pearls of wisdom any further discussion. So I'm going to adjourn the proceedings with the statement that I will take appropriate steps to move the court to compel an answer to the pending question, which I contend has not been answered properly, appropriately one way or the other, and that I am entitled to an answer to that question and that I will seek sanctions with regard thereto. And further, that I am entitled to inquire further relating to the contents of the containers, not by what words and what subject -- I mean, what is said in the various documents, but a -- an inventory or a catalogue of the material that is in each of the containers. But we're not going to persuade each other in debating that right here on this record. We'll present that to the court at the appropriate time and place and manner. So with that, I don't finish my deposition. I adjourn it pending further court order.

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MR. DeMOISEY: All right.
A. The last time we had an opportunity to --
THE REPORTER: Do you want this off?
A. Doesn't matter.
MR. DeMOISEY: I don't know what that means.
A. Okay. The last time we had an opportunity to review the testimony, the record and to put any errata that might be there or erratum, and I would like the same opportunity this time. That's normal, I guess.
MR. DeMOISEY: The other question my client raised is that if you intend to take the computer into your possession, understanding that it's going to remain in a sealed status, I guess we would like to have some sort of understanding when we can get to a resolution that either returns the computer to Mr. Williams or replaces it. The more I think about it, the more I think our position would be that we would prefer to have it destroyed simply because there's more things in there than just your client's concerned, and that if we start down-loading the thing, then we're going to get into all kind of different things if it can be down-loaded.
MR. BALLANTINE: Yeah. I -- I've indicated my predilections and predispositions on that.
MR. DeMOISEY: We're just asking a time line.

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MR. BALLANTINE: Now, as to the time line, I would think -- today's Wednesday. I would hope that we could have some answer to that question by Friday. And then we've got the lingering problem how and by whom is, quote, fair market value, unquote, defined when I can't even know what's in there. I mean --
MR. DeMOISEY: Well, I don't think we have a problem with telling you --
A. Between 1500 and $2,000 would be a fair market value. Now, if you want to negotiate beyond that, it doesn't matter to me. What I'm concerned with here is this is a household computer. It's used by my children in preparing their papers and other things of that nature. I believe that in that context that either if you take it, when you take it, that you're depriving my other family members of the use of the computer regardless of what it stands to you and this particular matter. I would like to be able to allow my children to have some use of a computer. That's my only problem here.
Q. We will get that resolved as quickly as possible and get the access to some sort of computer as quickly as possible. Now, with all due respects, I have been to computer stores, and brand-new computers hardly cost $2,000. What kind and age is that?

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A. It's an IBM clone with a -- I believe it's called an MCV with an update on the, what you call it, the megabytes, whatever.
Q. To how many?
A. Twenty-two or 25. I'm not sure.
Q. Is it called an IBM clone, or is clone your word?
A. Clone is my word. Because I think the purchase is -- it's an MVC or an M -- I really don't know the name of it. I don't even -- it is an older computer. It's I would -- I would say it was purchased in 1987, and it was updated a little bit later on with the memory drive. So...
Q. Do you know offhand if you have any kind of record or sales slip or anything that would give us any indication of the information we're talking about now, the kind it is, the price you paid, et cetera?
A. If I could find it in the records, I certainly would. I would say that at the date of purchase it was somewhere around a thousand dollars. Computers were a little bit more than they are today. The update on it was about three hundred, somewhere in there. And then there are all kinds of additions, like the plug-in. There was an extra charge for that and so forth. I don't think there's any, you know, I think we could come to an equitable figure. I don't think -- if you

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want to take the computer and destroy it, that's fine. But I would like something for my children to have and something that's close to what that is.
Q. Well, again, I will take it up. It will facilitate the process and the speed of the process if you could see if you do have any kind of record, turn it over -- records, plural.
A. Well, I wouldn't want that to be the hinge on which we make a decision here.
Q. It isn't. I'm saying it will facilitate it and speed it up if you can get that available, because I've already heard ranges of dollars. And we're not talking a large sum, certainly, at this point.
MR. DeMOISEY: Can I make this suggestion?
MR. BALLANTINE: Sure.
MR. DeMOISEY: I don't know about you. Sometimes digging up six, seven, eight-year-old receipts and invoices that I don't for some reason seem to be able to either save or find when I need them anyway might be a problem. How about could we also agree -- why don't you just go out to a Circuit City or one of those places and try to replicate what it is that you had as another -- I mean, Mr. Ballantine has asked if you can do that, that's fine. The other side of it is, you know, see if you can identify something

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that looks the same.
A. My problem is I'd rather have the computer as it is. I'd rather have my computer.
MR. DEMOREY: I understand that. It's sort of an unusual circumstance. Mr. Ballantine's people are looking for some sort of range. You've given one from memory. The other thing is how do they know what it is that would replicate a suitable replacement. The answer is they don't. So I'm suggesting that maybe if you supply them with I've seen an ACME brand computer at Circuit City that looks like can do the same things mine did, and the cost of it is a hundred yen'.
A. Well, I've seen it, just off the record, a Tandy — or on the record, rather, a Tandy, which is a lesser type computer, for close to $900 for the same kind of memory system and so forth.
Q. Well, we've beat this horse as much as we need to beat. We've got ranges. And I'll talk to my people and let you know as quickly as possible. I would like, for, your commitment as counsel that these things will remain here until I can get my heavyweight over here to pick them up. I'll accept your client's invitation to borrow the dolly, and we'll get it back to you here.
MR. DEMOREY: It's fine. I guess I should say just to make the record complete, that I guess due

to my misunderstanding or miscommunication, this was really supposed to have happened yesterday. And this thing — these things have been sitting here since one or two o'clock yesterday afternoon. And they will remain here until such time as your authorized and probably younger colleagues will show up to take them.
MR. BALLANTINE: All right. Subject to the earlier statements, we are adjourned at this time but not over.

(WITNESS EXCUSED AT 1:55 P.M.)

*** *** ***

I, MERRILL WILLIAMS, JR., Ph.D., certify that I have read the foregoing typewritten transcript of my oral answers to questions propounded to me and that said typewritten transcript of my answers is true and correct with the exception of any notations which I have indicated and initialed.

Merrill Williams, Jr., Ph.D.

Subscribed and sworn to before me this the day of , 1994.

NOTARY PUBLIC

My commission expires

STATE OF KENTUCKY
COUNTY OF JEFFERSON

I, NANCY L. NUNNELLEY, Notary Public, State of Kentucky at Large, do hereby certify that the foregoing deposition of MERRILL WILLIAMS, JR., Ph.D., was taken at the time and place stated in the caption; that the appearances were as set forth in the caption; that prior to giving his testimony the witness was first duly sworn by me, that said testimony was taken down by me in stenographic notes and thereafter reduced under my supervision to the foregoing 31 typewritten pages and that said typewritten transcript is a true, accurate and complete record of my stenographic notes so taken.

I further certify that I am not related by blood or marriage to any of the parties hereto and that I have no interest in the outcome of captioned case.

My commission as Notary Public expires July 10, 1995.

Given under my hand this the 13th day of January 1994 at Louisville, Kentucky.

NOTARY PUBLIC

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